IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3534 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

CHIEF OFFICER - Petitioner(s)

Versus

TAPUBHAI JIVRAJBHAI - Respondent(s)

==========

Appearance :

MR SUNIL C PATEL for Petitioner No(s).: 1.

MR MURALI N DEVNANI for Respondent No(s).: 1.

==========

CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 06/07/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the order dated 22.01.1999 passed by the Labour Court, Rajkot, in Recovery

Application No. 1699 of 1986, whereby the Labour Court has directed the petitioner Nagar Palika to make payment of Rs.29,400.00 to the respondent.

2.0 The respondent herein was appointed as a daily wager Watchman in the year 1976. It is the case of the petitioner that the respondent filed an application being Recovery Application No.1699 of 1986 before the Labour Court, Rajkot, alleging that from the year 1977 to March 1986 he was discharging the duties of an Octroi Naka Clerk, but, was being paid the wages of a daily rated Workman only, and therefore, he should be paid the salary of an Octroi Naka Clerk. The Labour Court, Rajkot vide award dated 22.01.1999 partly allowed the said application as aforesaid. Hence, this petition.

3.0 Mr. S C Patel learned advocate for the petitioner has contended that though specific contention was raised before the Labour Court that the Labour Court had no jurisdiction to entertain the matter since there didn't exist any award, order or judgment between the parties. He has submitted that the Labour Court has committed error by exercising powers under Section 33-C(2) of the Industrial Disputes Act, 1947.

4.0 I have heard learned counsel for the parties. Having perused the documents placed on record, it appears that there does not exists any award, order or judgment between the petitioner and the respondent herein. In the absence of the above, the Labour Court ought not to have entertained the application under Section 33-C(2) of the Industrial Disputes Act, 1947 inasmuch as the benefits claimed by the respondent workman were neither adjudicated nor

crystallized by virtue of any award, order or judgment made after proper adjudication. Hence, the impugned order of the Labour Court is without any jurisdiction and is required to be quashed and set aside.

5.0 For the foregoing reasons, this petition is allowed. The impugned order dated 22.01.1999 passed by the Labour Court, Rajkot, in Recovery Application No. 1699 of 1986 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

pravin/ *